

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION**

MEREL SMITH,)	D.C. Civ. APP. NO. 2006/044
)	
Appellant,)	Re: Sup.Ct.Crim. 228/2003
)	
v.)	
)	
IVER A. STRIDIRON, ATTORNEY GENERAL))	
GOVERNMENT OF THE VIRGIN ISLANDS,)	
)	
Appellee.)	
)	

FILED
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ST. CROIX

On Appeal from the Superior Court of the Virgin Islands

Considered: June 15, 2007
Filed: February 26, 2008

BEFORE: CURTIS V. GÓMEZ, Chief Judge, District Court of the Virgin Islands; RAYMOND L. FINCH, Judge of the District Court of the Virgin Islands; and AUDREY L. THOMAS, Judge of the Superior Court of the Virgin Islands, sitting by Designation.

ATTORNEYS:

Merel Smith, *pro se*
St. Croix, U.S.V.I.

Richard Schrader, AAG
St. Croix, U.S.V.I.
Attorney for Appellee.

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Per Curiam.

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I. Issue Presented

Appellant, Merel Smith, was convicted and sentenced for local crimes by the Territorial Court of the Virgin Islands, Division of St. Croix. Appellant challenges the trial court's denial, on remand, of Appellant's petition for writ of habeas corpus. Appellant raises one appealable issue for this Court's consideration.

Whether the trial court erred in determining that the requirements of 5 V.I.C. § 4503(c) were satisfied when Appellant was transferred from Golden Grove Correctional Facility in St. Croix, U.S. Virgin Islands to Wallens Ridge Prison in Big Stone Gap, Virginia.

II. Facts and Procedural Posture

The instant *pro se* Appellant is currently incarcerated at the Wallens Ridge Prison in Big Stone Gap, Virginia.¹ In the underlying appeal, Appellant challenged his confinement at Wallens Ridge on several grounds, including that the Attorney General at the time, Iver Stridiron, abused his discretion by transferring Appellant to Wallens Ridge without the availability of adequate educational opportunities there. This Court considered Appellant's various claims and on October 23, 2003,

¹ The Government of the Virgin Islands has the requisite Congressional approval to enter into an agreement with any of the fifty states for the transfer, housing and care of Virgin Islands prisoners, 4 U.S.C. § 112; *Maxwell v. Stridiron*, 45 V.I. 185 (2003).

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remanded the matter to the Superior Court for further consideration concerning one claim. Specifically, whether Appellant was improperly deprived of his statutory right to access educational or vocational programs at the institution in which he is housed. See *Merel Smith v. Iver Stridiron*, D.C. Civ. App. No: 2002-51.

On remand, the trial court made several factual findings. First, the trial court found that there were various educational opportunities at Wallens Ridge, including the following programs: Substance Abuse, Anger Management, Breaking Barriers, Productive Citizenship, Special Education, Adult Basic Education (several levels), the LIP Program, G.E.D. classes, Cognitive Skills and Custodial Maintenance. Second, the trial court found that the Virgin Islands Bureau of Corrections on St. Croix also had several educational programs including: G.E.D., Anger Management, Substance Abuse, Pre-G.E.D, Carpentry, Mechanics and Upholstery. Finally, the trial court found that Appellant's inmate profile revealed that he completed the Adult Basic Education and Cognitive Skills Program at Wallens Ridge in 2002 and applied for the Anger Management Program the same year. After examining the facts on the record, the trial court held that the Virgin Islands statute which provides that educational and vocational opportunities shall be made available to the incarcerated, does

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not mandate that the programs offered at both facilities be the same. On November 7, 2005, the trial court denied Appellant's Petition for Writ of Habeas Corpus. This timely appeal followed.

III. Discussion

A. Jurisdiction and Standard of Review

This Court has jurisdiction to review the judgments and orders of the Superior Court in civil habeas corpus cases. See Revised Organic Act of 1954 § 23A, 48 U.S.C. § 1613a. For mixed questions of law and fact, a reviewing court must separate an issue into its component parts and apply a clearly erroneous standard to the factual component and a plenary standard to the legal component. *C.f. Ram Const. Co., Inc. v. American States Ins. Co.*, 749 F.2d 1049, 1953 (3d Cir. 1984); *Parrott v. Government of the Virgin Islands*, 41 V.I. 188, 56 F. Supp. 2d 593, 594 (D.V.I. App. Div. 1999).

B. Whether the trial court erred in determining that the requirements of 5 V.I.C. § 4503(c) were satisfied.

Appellant argues that the trial court erred in holding that the requirements of 5 V.I.C. § 4503(c) were satisfied when Appellant was transferred to Wallens Ridge. Appellant challenges both the trial court's finding of facts and its interpretation of the statute. This Court will first address the trial court's interpretation of the statute in dispute.

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**1. The trial court's interpretation of V.I. Code
Ann. tit. 5 § 4503(c)**

In questions of statutory interpretation, our review is plenary. *See Parrot v. Government of the Virgin Islands*, 41 V.I. 188, 56 F. Supp. 2d 593, 594 (D.V.I. App. Div. 1999).

4503 (c) states in pertinent part:

The Attorney General is authorized to enter into agreements to use the correctional or detention facilities of the United States Bureau of Prisons; or the correctional facilities of any state or local government or private correctional entity located in the United States, its territories, possessions, commonwealths or the District of Columbia, which are accredited by the American Correctional Association, when the Attorney General determines that detention and/or correctional facilities within the Virgin Islands are inadequate to serve the best interest of the inmate or the general interest or welfare of the Territory; provided that as a condition of and prior to the transfer of any inmates, the Attorney General shall ascertain and insure the availability of educational and/or vocational programs at the institution they are to be transferred to for the purpose of enabling such inmates to gain marketable skills, and provided further that no inmate is to be transferred to any institution lacking any such program(s). V.I. Code tit. Ann. 5 § 4503 (c).

Appellant argues, that pursuant to 5 V.I.C. § 4503(g), the Director of the Bureau of Corrections failed to promulgate rules and regulations, mandated by the legislature, establishing the procedure by which the Bureau of Corrections ascertained the availability of educational and/or vocational programs at the

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institution to which a Virgin Islands inmate is transferred.²

(Appellant's Brief p. 12) Act No. 4399 § 1, Sess. L. 1980 p. 3-4.

However, Appellant's argument is based on antiquated law.

5 V.I.C. § 4503 went through several amendments. The first of those amendments occurred in 1987. The 1987 Amendment of 4503 re-designated former subsection(g) as subsection(c). Act No. 5265 § 402(a)(3), (4), Sess. L. 1987 p. 55. In pertinent part, the effect of the 1987 amendment eliminated previous subsection (g) and substituted "Attorney General" for "Director." Thereafter, in 1997, 4503(c) (previously subsection (g)) was amended yet again to the present subsection (c).³ See Act No. 6141, § 1, Sess. L. 1997, p. 38. In the 1997 version, (which is the current version) section "(g)," upon which Appellant partially bases his claim,

² Former subsection 4503(g) reads: Section 1: "The Director is authorized to use the facilities of the United States Bureau of Prisons in accordance with agreement between the Virgin Islands and the United States Department of Justice when the Director determines detention and/or correctional facilities within the Virgin Islands are inadequate to serve the best interests of the inmate or the general welfare of the Territory." Act No. 4399 (Approved January 22, 1980). Section 2: "No later than 20 days after the date of enactment of this act the Director of the Bureau of Corrections shall promulgate rules and regulations establishing the procedure by which he will make determinations pursuant to the authority given the Director under Section 1 of this act." *Id.*

³ The 1997 version of 4503(c), unlike previous subsection (g), contains no provisions requiring the Bureau of Corrections to promulgate rules, regulations or procedures to determine the compatibility, efficacy or adequacy of educational or vocational programs at facilities Virgin Islands' prisoners are transferred to. However, the current version specifically requires that educational and vocational programs be made available to transferred inmates, a requirement that was not expressly present in previous subsection (g).

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was eliminated. The current and applicable version of 5 V.I.C. § 4503 contains no provisions that require the Director of the Bureau of Corrections to promulgate rules or regulations to govern the ascertainment of educational opportunities for transferred inmates.

Appellant was transferred to Wallens Ridge on August 2, 2001 (Appellant's Brief p. 13, 16.) Hence, the 1997 version of § 4503 would be applicable to this appeal. Thus, the pertinent portion of the statute in dispute states:

[T]he Attorney General shall ascertain and ensure the availability of educational and/or vocational programs at the institution they are to be transferred to for the purpose of enabling such inmates to gain marketable skills, and provided further that no inmate is to be transferred to any institution lacking any such program(s). 5 V.I.C § 4503(c).

The Supreme Court has emphasized that in interpreting a statute a Court should always turn first to one, cardinal canon before all others. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). Only ambiguous statutes should be subject to statutory interpretation. *United States v. American Trucking Ass'ns*, 310 U.S. 534 (1940). Ambiguity exists when reasonable persons can interpret a statute in two or more

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different ways. *Barnes v. Cohen*, 740 F.2d 1009 (3d. Cir. 1984). Consequently, the "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, (1997), 117 S.Ct. 843, 846, 136 L.Ed.2d 808 (1997). When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete. *Id.*

Appellant's challenge is predicated on the contention that the Director of the Bureau of Corrections failed to promulgate rules and regulations, mandated by the legislature, establishing the procedure by which the Bureau of Corrections ascertained the availability of educational and/or vocational programs at the institution to which a Virgin Islands inmate is transferred. (Appellant's Brief p. 20-21.) However, in this matter, the words of the statute are clear. A plain reading of this statute reveals that the Attorney General must: 1) determine that educational programs exist at the facility to which an inmate is transferred; 2) ascertain that the purpose of such programs are for inmates to gain marketable skills; and 3) ensure that no inmate be transferred to any institution lacking such programs. There is no requirement that the programs be comparable, nor that the Attorney General promulgate rules that ascertain that one

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institution's programs are more or less effective at making an inmate marketable than another institution's programs. While Appellant's desire to seek educational opportunities tailored to his aspirations are well-placed, the statute cannot be interpreted to create procedures nor objective criteria that are not within its text. As such, the trial court did not err.

2. The trial court's findings of fact

On November 7, 2005, the trial court denied Appellant's remanded Petition for Writ of Habeas Corpus. Appellant challenges the trial court's findings of facts. The trial court's findings of facts are examined under a clearly erroneous standard of review. *C.f. Ram Const. Co., Inc. v. American States Ins. Co.*, 749 F.2d 1049, 1953 (3d Cir. 1984); *Parrott v. Government of the Virgin Islands*, 41 V.I. 188, 56 F. Supp. 2d 593, 594 (D.V.I. App. Div. 1999).

In denying Appellant's Petition, the trial court held that not only were several educational and vocational programs offered at Wallens Ridge, but that Appellant completed the Adult Basic Education and Cognitive Skills Program in 2002 and applied for the Anger Management program the same year. (November 7, 2005 Superior Court Order p. 2.)

This Court does not reverse a trial court's factual

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determination unless that determination either (1) is completely devoid of minimum evidentiary support displaying some hue of credibility or (2) bears no rational relationship to the supportive evidentiary data. *Georges v. Virgin Islands*, 119 F. Supp. 2d 514, 519 (2000). A trial court's finding of fact is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Id.* Where there are two permissible views of the evidence, the judge's choice between them cannot be clearly erroneous. See *Linder and Assocs., Inc. v. Aetna Casualty and Surety Co.*, 166 F.3d 547, 551 (3d Cir. 1999).

In support of his challenge to the trial court's factual findings, Appellant argues that he did not participate in the Adult Basic Education course and as such, this court erred in its factual conclusion. (Appellant's Brief p. 31.) However, Appellant's choice not to enroll in more classes does not defeat the factual finding that he did enroll and complete at least once course and that several Adult Basic Education courses and other vocational and educational courses continue to be available to him. As such, it cannot be said that the record is devoid of evidentiary support displaying some hue of credibility that:

1) there are educational and/or vocational programs at Wallens Ridge and 2) that these programs were and are available to Appellant. Hence, this Court cannot conclude that the trial court

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judge's determination bore no rational relationship to the supportive data. Accordingly, under a clearly erroneous standard of review, this Court affirms the trial court's findings of fact.⁴

IV. Conclusion

For the reasons cited above, the trial court's findings of fact and conclusions of law concerning 5 V.I.C. § 4503(c) are affirmed. Accordingly, the trial court's denial of Appellant Merel Smith's Petition for Writ of Habeas Corpus is hereby **AFFIRMED.**

⁴ Appellant also challenges the trial court's factual findings based on his contention that the trial court solely relied on Appellee's "information and documents" and inappropriately disregarded Appellant's exhibits and legal arguments. This argument was not raised below and is only afforded plain error review. Nothing in the record indicates that the trial court judge disregarded Appellant's submissions, exhibits or arguments. Accordingly, we conclude that this argument is wholly without merit.